



**THE ATTORNEY GENERAL
OF TEXAS**

GROVER SELLERS
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Miss Catherine Lyne Barnhill
County Attorney, Bee County
Beeville, Texas

Dear Miss Barnhill:

Opinion No. O-6103

Re: Filing date of an independent
candidate for sheriff and re-
lated matters.

Your letter of July 5, 1944, requesting the opinion of
this department regarding the questions stated therein is as follows:

"I should like to request an opinion as to whether
under Articles 3157 et seq an independent candidate
for Sheriff in the general election, can file before the
Democratic Primaries July 22, or whether said inde-
pendent candidate for Sheriff should wait until after the
Primary, and file within 30 days thereafter? I should
like to have the ruling of the department on whether
the enclosed application as prepared meets the require-
ments of the statute.

"G. W. Robinson, Box 183, Port Isabel, Texas,
has signified his intention of filing as an independent
candidate for Sheriff in the General Election in Bee
County. He is quite anxious to obtain this ruling, as
he filed too late to have his name appear on the ballot
in the Democratic Primary."

Article 3162, Vernon's Annotated Civil Statutes, pro-
vides:

"Independent candidates for office at a county,
city or town election may have their names printed
upon the official ballot on application to the County
Judge, if for a county office, or to the Mayor, if for
a city or town office, such application being in the
same form and subject to the same requirements
herein prescribed for applications to be made to
the Secretary of State in case of State or District

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Independent nominations; provided, that a petition of five per cent of the entire vote cast in such county, city or town at the last general election shall be required for such nomination."

It will be noted that Article 3162, supra, requires the applications of candidates for a county office to be in the same form and subject to the same requirements prescribed for applications to be made to the Secretary of State in case of State or District Independent nominations; provided, that a petition of five per cent of the entire vote cast in such county at the last general election shall be required for such nomination.

Article 3159, Vernon's Annotated Civil Statutes, pertaining to non-partisan and independent candidates for nomination to State or district offices provides, in part, as follows:

"***A written application signed by qualified voters addressed to the Secretary of State and delivered to him within thirty days after primary election day as follows:

"***"

In answer to your first question, you are respectfully advised that it is the opinion of this department that the independent candidate for Sheriff should wait until after the general primary and file his application with the County Judge within thirty days thereafter, provided, of course, as heretofore stated, the petition must be signed by at least five per cent of the entire vote cast in such county at the last general election and that every citizen who signs such application shall be administered the oath prescribed by Article 3160, Vernon's Annotated Civil Statutes.

Article 3160, Vernon's Annotated Civil Statutes, reads as follows:

"To every citizen who signs such application, shall be administered the following oath, which shall be reduced to writing and attached to such application, viz: 'I know the contents of the foregoing application; I have participated in no primary election which has nominated a candidate for the office for which I (here insert the name) desire to be a candidate; I am a qualified voter at the next general election under the Constitution and laws in force, and

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have signed the above application of my own free will.' One certificate of the officer before whom the oath is taken may be so made as to all to whom it was administered."

With reference to the enclosed application, it is noted that said application pertaining to the oath to be administered by each citizen who signs the application follows substantially the oath prescribed by Article 3160, supra, however, one word has been omitted in the oath which is prescribed by said statutes. The oath reads, in part: "I participated in no primary election which has nominated ***" and the statute provides "I have participated in no primary election." The word "have" is omitted in the application. We suggest that the oath prescribed by Article 3160 be followed as set out in said statute. Stated differently, the oath should be in the same language as provided by Article 3160, otherwise, the application complies with the statute applicable thereto.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By /s/ Ardell Williams
Ardell Williams
Assistant

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APPROVED JULY 13, 1944

/s/ E. G. Blackburn

(Acting) ATTORNEY GENERAL OF TEXAS

APPROVED

Opinion Committee

By /s/BWB, Chairman